APPEAL NO. 031174
FILED JUNE 25, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on April 3, 2003. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to or include posterior tibial nerve entrapment or plantar fasciitis and that the claimant was not entitled to supplemental income benefits (SIBs) for the 8th or 9th quarters. The claimant files a request for review and the respondent (carrier) files a response urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant contends that the hearing officer improperly relied on Merrell Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997), cert denied 523 U.S. 1119. As the Appeals Panel stated in Texas Workers' Compensation Commission Appeal No. 000651, decided April 11, 2000, we do not say that Havner, *supra*, has no place in a workers' compensation proceeding; it can be used by the hearing officer to evaluate the evidence and to assess the weight and credibility he or she will assign thereto. *See also* Texas Workers' Compensation Commission Appeal No. 000623, decided May 11, 2000. The reliability, weight, and relevance of such evidence rests solely with the hearing officer, and we will reverse a factual determination of a hearing officer only if that determination is against the great weight of the evidence. With respect to whether the claimant's injury extends to or includes posterior tibial nerve entrapment or plantar fasciitis, the hearing officer stated, "since the mechanism of injury appears unlikely to have caused any direct trauma to the Claimant's feet, heels, or ankles, it is unlikely that members of the general public would understand the alleged method of causation; for this reason, the causal relationship between Claimant's accident…and his subsequently diagnosed…must be proven through the use of expert evidence." The hearing officer discounted the medical reports offered regarding causation because she did not find them persuasive. The Appeals Panel has required expert evidence to establish causation in these types of cases. *See* Texas Workers' Compensation Commission Appeal No. 93390, July 2, 1993. Consequently, the hearing officer did not err in requiring expert evidence regarding the causation of the claimant's alleged injuries, or in rejecting the expert medical evidence offered, as it was the province of the hearing officer to determine what weight to give the evidence.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex.

Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Further, the hearing officer did not err in determining that the claimant is not entitled to 8th and 9th quarter SIBs. At issue was whether the claimant had a total inability to work during the qualifying periods, thereby satisfying the good faith job search requirement of Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence. Campos, *supra*. The hearing officer considered the claimant's evidence and found that the claimant did not satisfy the above-referenced good faith criteria. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Margaret L. Turner
Appeals Panel